

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-02-TC-033
)	CUID No. TX0555 (Hurst)
Marcus Cable Associates, LP)	
)	
Petition for Reconsideration)	

ORDER ON RECONSIDERATION

Adopted: May 6, 2002

Released: May 8, 2002

By the Chief, Enforcement Bureau:¹

1. In this Order we consider a petition for reconsideration ("Petition") of Order, DA 99-173² ("Second Order"), filed with the Federal Communications Commission ("Commission") on February 16, 1999. The Second Order resolved a complaint against the September 1, 1998 rate increase by the above-referenced operator ("Operator")³ for its cable programming services tier ("CPST") in the community referenced above. It also resolved a petition for reconsideration of Order, DA 97-2041 ("First Order").⁴ In this Order, we dismiss Operator's Petition and calculate Operator's refund liability.

2. Under the provisions of the Communications Act⁵ that were in effect at the time the complaints were filed, the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")⁶ and the Commission's rules required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),⁷ and the Commission's rules implementing the legislation ("Interim Rules"),⁸ require that a complaint against the CPST rate be filed with

¹ Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

² *In the Matter of Marcus Cable Associates*, DA 99-173, 14 FCC Rcd 972 (CSB 1999).

³ The term "Operator" includes Operator's predecessors and successors in interest.

⁴ *In the Matter of Marcus Cable Associates*, DA 97-2041, 13 FCC Rcd 5967 (CSB 1997).

⁵ 47 U.S.C. §543(c) (1996).

⁶ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁷ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁸ *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

the Commission by an LFA that has received more than one subscriber complaint. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁹ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.¹⁰

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.¹¹ Cable operators may justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation, by filing FCC Form 1210.¹² Operators may justify their rates on an annual basis using FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.¹³ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹⁴

4. In the First Order the Cable Services Bureau concluded that Operator's June 1, 1997 CPST rate increase was unreasonable. In the Second Order it denied Operator's petition for reconsideration of the First Order and reviewed Operator's FCC Form 1240 for the projected period beginning September 1, 1998. It found Operator's CPST rate, effective September 1, 1998 through March 31, 1999, to be unreasonable. In its Petition, Operator raises one issue concerning the Cable Services Bureau's calculation of its maximum permitted rate ("MPR") for the period September 1, 1998 through March 31, 1999. However, our review of the record reveals that the total refund liability incurred by Operator, for the period September 1, 1998 through March 31, 1999, is *de minimis*, and it would not be in the public interest to order a refund for that period.

5. It would not be a judicious use of Commission resources to attempt to resolve appeals of CPST rate orders that had no adverse affect on the petitioner, either because the order found no refund liability at all or found a *de minimis* liability that did not later result in the petitioner incurring actual refund liability. Resolution of such appeals will have no consequences other than to put additional strain on limited Commission resources which are better used to resolve pending complaints and appeals of orders that involve potential or actual refund liability. Therefore, we have determined that appeals of CPST rate orders that do not involve actual refund liability will be dismissed because there is no real relief that may be granted through resolution of the appeal.¹⁵ Because our resolution of Operator's Petition would have no effect on Operator's refund liability, we decline to address the issue raised by Operator and we will dismiss Operator's Petition.

⁹ See Section 76.956 of the Commission's rules, 47 C.F.R. §76.956.

¹⁰ See Section 76.957 of the Commission's rules, 47 C.F.R. §76.957.

¹¹ See Section 76.922 of the Commission's Rules, 47 C.F.R. § 76.922.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See, for example, *In the Matter TCI of Illinois d/b/a Telenois, Inc.*, DA 01-1468, 16 FCC Rcd 12654 (CSB 2001).

6. Because Operator never submitted a refund plan in response to the First or Second Order, we calculate Operator's refund liability as follows: For the period from June 1, 1998 through August 31, 1998, we calculate an overcharge of \$1.11 per month per subscriber. Operator's actual CPST rate for this period was \$14.62 and its MPR was \$13.51. This time period was not included in the true-up portion of Operator's FCC Form 1240 for the projected period beginning September 1, 1998, which we reviewed in our Second Order. Our total calculation, including five percent franchise fees plus interest on the overcharges and franchise fees through April 30, 2002, equals \$27,533.00. We order Operator to refund this amount, plus any additional interest accrued to the date of refund, to its CPST subscribers within 60 days of the release of this Order.

7. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. §1.106, that Operator's Petition for Reconsideration IS DISMISSED.

8. IT IS FURTHER ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and §76.962, that Operator shall refund to subscribers in the franchise area referenced above the total amount of \$27,533.00, plus any additional interest accrued between April 30, 2002 and the date of refund, within 60 days of the release of this Order.

9. IT IS FURTHER ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and §76.962, that Operator file a certificate of compliance with the Chief, Enforcement Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau